

REMARKS

This correspondence is filed in response to the final Office Action dated July 15, 2005. Currently, Claims 1-37 and 39-92 are pending for examination. Despite Applicants previously filing a Declaration under 37 C.F.R. § 1.131 swearing behind the Travis publication (hereinafter the "First Declaration"), the final Office Action continues to reject Claims 1-3, 6, 7, 9, 10 and 75 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0010668 to Travis et al., in view of U.S. Patent Application Publication No. 2002/0156661 to Jones et al. The final Office Action also continues to reject the remaining claims, namely Claims 4, 5, 8, 11-37, 39-74 and 76-92 under 35 U.S.C. § 103(a) as being unpatentable over the Travis publication in view of the Jones publication, and further in view of various combinations of U.S. Patent No. 6,574,607 to Carter et al., Web site materials from Lastminute.com, prior art allegedly admitted in the specification and by applicant, and an Official Notice of facts outside the record which are alleged to be capable of instant and unquestionable demonstration of being "well known."

As explained below, Applicants again respectfully submit that the claimed invention is patentably distinct from the cited references, taken individually or in combination. Nonetheless, and in response to the Examiner's indication in the final Office Action that the previously submitted Declaration was insufficient, Applicants submit herewith a Revised Declaration under 37 C.F.R. § 1.131 again establishing conception of the claimed invention prior to the earliest effective filing date of the Travis publication (i.e., January 27, 2000), and due diligence from before Travis's filing up to constructive reduction to practice of the claimed invention on March 1, 2000 when the present application was filed. In view of the remarks presented herein and the Revised Declaration, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application. Alternatively, as neither the remarks presented herein nor the Revised Declaration raise any new issues or introduce any new matter, Applicants respectfully request entry of this correspondence for purposes of narrowing the issues upon appeal.

I. The Claimed Invention is Patentable over the Cited References

As also indicated above, the Official Action rejects Claims 1-37 and 39-92 as being unpatentable over the Travis application, in view of the Jones application, and further in view of various combinations of Web site materials from Lastminute.com, prior art admitted in the specification, and an Official Notice of facts outside the record which are alleged to be capable of instant and unquestionable demonstration of being “well known.” As previously explained, the Travis application discloses an online targeted merchandising and marketing system that allows a user to purchase an entire experience (package), including commodities from a plurality of vendors, in a single transaction. As disclosed, the components of the experience that will be sold can be selected by readily identifying the most basic components (e.g., a tour package and an airline ticket for a vacation experience), and/or by identifying components via brainstorming sessions and focus group analysis. The selection of components may be further refined by cluster analysis. Before selecting the components of the experiences, however, the system can identify target market segments and buying intentions of consumers. Demographic profiling of members of the target market can be used to identify archetypes associated with the customers. The system can then use the archetypes to match customers to particular experiences.

The Jones application discloses a goal-oriented travel planning system. As disclosed, the system processes travel requests based upon a user’s travel destination goal. The system processes the travel requests by interactively determining, from the travel destination goal, a travel itinerary, which may include flight information, hotel information, and ground transportation, to ensure the user accomplishes the travel destination goal. The Lastminute.com Web site materials disclose a Web portal for searching for goods and services, such as flights, holidays, restaurants, hotels, gifts, entertainment, and auction items. As disclosed, Lastminute.com attempts to “encourage spontaneous, romantic and sometimes adventurous behavior by offering users the chance to live their dreams at unbeatable prices.”

As recited by independent Claims 1 and 11, a method and system are provided, respectively, for offering items for sale. The method and system include an affinity space coordinate defined for each of a number of items available for sale, and a package template including at least one mandatory element schema having an associated affinity space description.

As disclosed in the specification, for example, the affinity space for restaurants may include qualities, such as “service,” “romance,” “impressiveness” and “food quality,” associated with the respective restaurants. Pat. App. page 29, lines 14-15. The method and system also include dynamically generating a package for sale by comparing the affinity space coordinate for each of the items with the affinity space description associated with the package template. Then, if a match is made from the comparison, a dynamically generated package is presented for sale, the package being defined at least in part by the package template and includes at least one item with a matching affinity space description.

A. Independent Claims 1 and 11.

In contrast to the claimed invention of independent Claims 1 and 11, none of the cited references, individually or in combination, teach or suggest defining affinity space coordinates for a plurality of products and services. Also, none of the cited references teach or suggest creating a package template that includes an affinity space description, as also recited by independent Claims 1 and 11. Further, none of the cited references teach or suggest comparing the affinity space coordinate for each item with the affinity space description associated with the package template. A number of the cited references do disclose packaged or grouped items, however, nowhere do any of the cited references disclose defining an affinity space coordinate for each of a plurality of products and services, or creating a package template from which the packages are selected.

The Examiner alleges that the Travis application discloses creating a package template that includes an affinity space description. And while the Examiner correctly identifies that the Travis application does not disclose defining affinity space coordinates for the items for sale, or comparing the affinity space for each item with the affinity space description associated with the package template, the Examiner cites the Jones application for these elements of the claimed invention. In contrast to the Examiner’s allegations, Applicants respectfully submit that the Travis application does not teach or suggest creating a package template that includes an affinity space description. Further, Applicants respectfully submit that the Jones application does not teach or suggest defining affinity space coordinates for the items for sale, or comparing the

affinity space for each item with the affinity space description associated with the package template.

The Travis application discloses that packaged components can be selected by readily identifying the most basic components and/or by identifying components via brainstorming sessions and focus group analysis, where the selection may be further refined by a cluster analysis. *See* paragraph 0018. Nowhere does the Travis application teach or suggest, however, that the most basic components of a package are identified from a template including an affinity space description, or that the brainstorming sessions and focus group analysis identify components from a template including an affinity space description. In fact, the only specific basis given for selecting components of a package are demographic profiles, which may be used to identify archetypes associated with customers. Further, while the Travis application does disclose refining a selection of products using clustering, such clustering as disclosed by the Travis application does not match an affinity space description with one or more affinity space coordinates of products and services, as recited in independent Claims 1 and 11.

The Jones application, like the Travis application, does not teach or suggest defining affinity space coordinates for the items for sale, or comparing the affinity space for each item with the affinity space description associated with the package template. The Jones application discloses interactively building an itinerary based upon a user's travel destination goal, where the itinerary may include air and/or ground transportation, hotels, restaurants, and activities. The Jones application discloses databases storing data relating to components of an itinerary, however, nowhere does the Jones application teach or suggest that the data comprises affinity space coordinates or even that the data have associated affinity space coordinates. Also, the Jones application discloses that components (e.g., transportation, hotel, restaurant, activities, etc.) of an itinerary can be selected based upon travel parameters, such as an indication of whether the user wants activity and restaurant information. *See* paragraph 0040. The Jones application does not teach or suggest, however, that the components of the itinerary are selected by comparing the affinity space for each item or component with an affinity space description associated with an itinerary or package template, as recited by independent Claims 1 and 11.

Further, Applicants' undersigned attorney conducted a telephone interview with the

Examiner on September 12, 2005, to discuss the alleged deficiencies of the First Declaration filed on April 12, 2005. During the telephone interview, the Examiner alleged that Exhibit A does not show that package segments are defined by “affinity space coordinates.” The Examiner stated that in order to show “affinity space coordinates,” Exhibit A must show that certain dimensions must be shown to correlate to coordinates (x1, y1, z1, w1) and (x2, y2, z2, w2) in affinity space as indicated on page 29, lines 19 to 22. Consistent with the Examiner’s interpretation of “affinity space coordinates,” then, Applicants respectfully submit that the Jones publication cannot reasonably be interpreted to teach or suggest “affinity space coordinates,” as recited by independent Claims 1 and 11. In this regard, the cited passage of the Jones publication cited by the Examiner as disclosing this feature of the claimed invention (i.e., page 2, paragraph 0034) merely discloses a “travel database represents a plurality of databases containing many different types of data.” The cited passage proceeds to list examples of types of such data. The cited passage of the Jones publication fails to provide any teaching or suggestion of “affinity space coordinates.” This is particularly true in light of the Examiner’s own definition of such feature wherein certain dimensions must be shown to correlate to coordinates (x1, y1, z1, w1) and (x2, y2, z2, w2) in affinity space.

Moreover, as indicated above, the Lastminute.com Web site materials disclose a Web portal for searching for goods and services to encourage various types of behavior, including spontaneous, romantic and/or adventurous behavior. Like the Travis and Jones applications, however, the Lastminute.com Web site materials do not teach or suggest defining an affinity space coordinate for each of a plurality of products and services, creating a package template that includes an affinity space description, or comparing the affinity space coordinate for each item with the affinity space description associated with the package template, all of which are recited by independent Claims 1 and 11. Applicants therefore respectfully submit that Claims 1 and 11 are patentably distinct from all of the cited references, taken individually or in combination, and as such, the rejection of independent Claims 1 and 11 are overcome.

B. Independent Claims 21, 28, 29 and 32

Independent Claims 21, 28, 29 and 32 recite a method and system of offering packages

over a decentralized computer network, a method of dynamically creating packages, and a method for building packages, respectively. The methods and system include dynamically generating at least one travel package based on at least one travel package template and travel component descriptions. The travel packages are then offered to a consumer. In a manner similar to that described above with respect to independent Claims 1 and 11, none of the cited references, individually or in combination, teach or suggest a method including dynamically generating travel packages based upon travel package templates, as recited by independent Claims 21, 28, 29 and 32. Applicants therefore respectfully submit that the method and system of independent Claims 21 and 28, and the methods of independent Claims 29 and 32, are patentably distinct from all of the cited references, taken individually or in combination, for at least the reasons given above with respect to independent Claims 1 and 11. As such, Applicants also respectfully submit that the rejection of independent Claims 21, 28, 29 and 32 is overcome.

C. Independent Claims 58, 72, 73 and 74

Independent Claims 58, 72, 73 and 74 recite a method of using a computer to develop and offer packages, a computer program product for offering items for sale, a dynamic package sales system and a dynamic package sales method. As recited, the methods, data structure and system include a package schema or package model that includes mandatory element, or element schema, and optional element, or element schema. Independent Claim 58 further recites the step of determining, for each mandatory element schema, items that fit to develop candidate packages. Independent Claim 72 further recites that a package schema data structure further includes required attributes and matching criteria. Independent Claim 73 includes a computer arrangement that matches components with package models to develop complete packages, and independent Claim 74 includes matching components with package models. In this regard, each of independent Claims 58, 72, 73 and 74 utilize or recite package templates such that packages can be developed from the templates. And as described above with respect to independent Claims 1 and 11, none of the cited references, individually or in combination, teach or suggest package templates from which packages can be developed. Applicants therefore respectfully submit that the methods, data structure and system of independent Claims 58, 72, 73 and 74, are

patentably distinct from all of the cited references, taken individually or in combination, for at least the reasons given above with respect to independent Claims 1 and 11. As such, Applicants also respectfully submit that the rejection of independent Claims 58, 72, 73 and 74 is overcome.

As indicated above, Applicants respectfully submit that independent Claims 1, 11, 28, 29, 32, 58 and 72-74 are patentably distinct from the cited references, taken individually or in combination. Dependent Claims 2-10, 12-27, 30, 31, 33-37 39-57 and 59-71 each depend, directly or indirectly, from one of independent Claims 1, 11, 28, 29, 32, 58 and 72-74, and as such, include the recitations of a respective independent claim. Applicants therefore respectfully submit that dependent Claims 2-10, 12-27, 30, 31, 33-37, 39-57 and 59-71 are patentably distinct from all of the cited references, taken individually or in combination, for at least the reasons given above with respect to the respective independent claim. As such, Applicants further respectfully submit that the rejections of dependent Claims 2-10, 12-27, 30, 31, 33-37, 39-57 and 59-71 are overcome.

D. Dependent Claims 4 and 14

In addition to the reasons described above, Applicants respectfully submit that various ones of the dependent claims recite additional features that are patentably distinct from all of the cited references, taken individually or in combination. For example, dependent Claims 4 and 14 recite that an elicited consumer constraint includes customer mood, where a package template is selected or rejected based at least in part on the consumer constraint. Just as none of the cited references teach or suggest defining an affinity space coordinate or description for either items for sale or package templates, Applicants respectfully submit that none of the cited references teach or suggest that none of the cited references, taken individually or in combination, teach or suggest eliciting a consumer constraint including customer mood. The Official Action alleges that the Lastminute.com Web site materials disclose that constraints include customer mood. Applicants respectfully submit, however, that the Lastminute.com Web site materials do not disclose customer mood as a constraint for selecting or rejecting a package template based at least in part on customer mood. The Lastminute.com Web site materials do disclose a mission statement of Lastminute.com to “encourage spontaneous, romantic and sometimes adventurous

behavior by offering users the chance to live their dreams at unbeatable prices.” The Web site materials do not disclose, however, that the mission statement or the encouraged behaviors in the mission statement, operate as constraints in selecting or rejecting package templates, as recited by dependent Claims 4 and 14.

II. Travis is not Prior Art to the Claimed Invention

Notwithstanding the fact that none of the cited references, individually or in combination, teach or suggest the claimed invention, Applicants submit herewith a Revised Declaration under 37 C.F.R. § 1.131, establishing conception of the claimed invention prior to the earliest effective filing date of the Travis publication (i.e., January 27, 2000), and due diligence from before Travis’s filing up to constructive reduction to practice of the claimed invention on March 1, 2000 when the present application was filed. Based on the Revised Declaration and supporting evidence attached thereto, it is respectfully submitted that, under the doctrine established in *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966), Travis is not prior art against the claimed invention. And as none of the remaining cited references, taken either individually or in combination, teach or suggest the claimed invention, Applicants respectfully submit that the Travis publication not being prior art provides a further reason for rejections of the claims being overcome.

A. The Revised Declaration is Sufficient under the Jones Publication’s Definition of Affinity Space Coordinates

Applicants filed the First Declaration on April 12, 2005 to remove the Travis publication as prior art against the claimed invention under MPEP 715.02. In the final Office Action, the Examiner alleges that the scope of the First Declaration is not commensurate with the scope of the claims. Specifically, the Examiner alleges that pages 20, 23, 25 and 31 of Exhibit A and pages 17 and 18 of Exhibit B of the Declaration do not teach that the package segments correspond to affinity space coordinates. Such an allegation is consistent with the Examiner’s definition of “affinity space coordinates” as expressed in the telephone interview of September 12, 2005. However, should the Examiner choose to liberally define “affinity space coordinates”

to be mere descriptions as suggested by the final Office Action in construing the disclosure of the Jones publication, the Applicants' Revised Declaration filed herewith is sufficient to show possession of the claimed invention as so defined.

Accordingly, given this definition of "affinity space coordinates," Applicants respectfully submit that the Revised Declaration submitted herewith is sufficient to establish conception and due diligence under MPEP 715.02 since pages 20, 23, 25 and 31 of Exhibit A and pages 17 and 18 of Exhibit B show at least that the package segments are defined in terms of qualities or attributes such as, for example, romantic, adventure, wacky, etc.

Accordingly, the scope of the Revised Declaration is commensurate with the scope of the claims and the Travis publication should be removed as prior art. Since none of the remaining cited references, taken either individually or in combination, teach or suggest the claimed invention, Applicants respectfully submit that the rejections of the claims are overcome. Therefore, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

B. The Revised Declaration is Sufficient with Respect to Independent Claims 21, 28, 32 and 58 Under any Definition of Affinity Space Coordinates

During the aforementioned telephone interview with the Examiner, the Examiner alleged that Exhibit A does not show that package segments are defined by "affinity space coordinates." The Examiner conceded, however, that Exhibit A shows at least that package segments are defined by different qualities.

Independent Claims 21, 28, 32 and 58 stand rejected under 35 USC §103 as being unpatentable over Travis/Jones/Lastminute.com and further in view of Carter for the same reasons listed in the rejection of claims 1-10 and 75. The Examiner asserts that the First Declaration was insufficient to overcome the Travis reference, due to failure of Exhibits A and B to show that Applicants had possession of affinity space coordinates. However, independent Claims 21, 28, 32 and 58 are not drawn to affinity space coordinates, but rather to attributes and/or qualities of a plurality of items (Claim 58) or descriptions of travel components (Claims 21, 28 and 32). Consequently, since pages 20, 23, 25 and 31 of Exhibit A and pages 17 and 18

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of Exhibit B show at least that the package segments are defined in terms of descriptions of qualities or attributes such as, for example, romantic, adventure, wacky, etc., Applicants have shown possession of the subject matter of claims 21, 28, 32 and 58 prior to the effective date of the Travis publication and the Travis publication must be removed as a reference, at least with respect to independent claims 21, 28, 32 and 58. Since none of the remaining cited references, taken either individually or in combination, teach or suggest the invention as claimed in independent claims 21, 28, 32 and 58, Applicants respectfully submit that the rejections of independent claims 21, 28, 32 and 58 are overcome. Claims 22-27, 29-31, 32-57, 59-71 and 77-81 depend either directly or indirectly from respective independent claims 21, 28, 32 and 58 and thus include all the recitations of their respective independent claims. Therefore, dependent claims 22-27, 29-31, 32-57, 59-71 and 77-81 are patentable for at least the same reasons as given above for independent claims 21, 28, 32 and 58. Accordingly, Applicants respectfully request reconsideration and allowance of claims 21-71 and 77-81 of the present application.

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CONCLUSION

In view of the remarks presented above and the Revised Declaration, Applicants respectfully submit that all of the claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

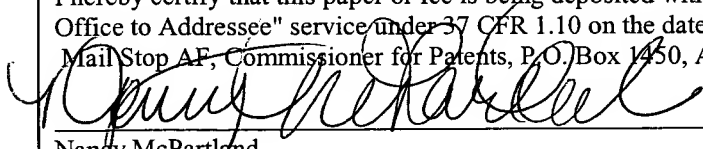


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